

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

John W. Miller,
Plaintiff,
v.
Apple Inc.,
Defendant.

Case No. 25-cv-1172 (JPC)

**NOTICE OBJECTING TO JUDICIAL STRIKING OF RECORD FILINGS FOLLOWING
PLAINTIFF'S INVOCATION OF FRCP RULE 38 JURY TRIAL DEMAND**

Plaintiff John W. Miller respectfully submits this Notice to:

1. Affirm his invocation of the right to a jury trial under Federal Rule of Civil Procedure 38, and
2. Formally object to any effort by Magistrate Judge Robyn F. Tarnofsky, or any other disqualified judicial officer, to strike filings from the record after Plaintiff's jury trial rights have attached.

1. Jury Trial Demand Filed Pursuant to FRCP Rule 38

Plaintiff has timely filed and preserved his right to a jury trial pursuant to FRCP 38(b). As this matter involves a demand for trial by jury on issues triable by right under the Seventh Amendment and federal law, FRCP 73(b) now applies and prohibits any magistrate judge from presiding over the trial or trial-related proceedings without Plaintiff's express consent, which has not been given.

2. FRCP Rule 73(b): Magistrate Judge May Not Oversee Jury Trial Proceedings

Per FRCP 73(b)(1):

"When a jury trial has been demanded under Rule 38, the magistrate judge must not conduct the trial unless all parties consent."

Because **Plaintiff has** not consented, and has in fact **formally objected to Magistrate Tarnofsky's involvement due to her disqualification under 28 U.S.C. § 455(b)(5)(i)**, **Magistrate Tarnofsky is barred from presiding over any aspect of this jury trial proceeding.**

3. Magistrate Tarnofsky's Attempt to Strike Plaintiff's Filings Is Unlawful

Magistrate Judge Tarnofsky — after being named as a party in the Supplemental Complaint (ECF No. 82) — has issued orders seeking to strike, suppress, or deny filings from the docket, including Plaintiff's amendment and judicial misconduct allegations.

Any such action by a disqualified magistrate after a jury trial demand has been entered is a violation of due process, Rule 38, Rule 73(b), and the Seventh Amendment.

4. Formal Objection and Reservation of Rights

Plaintiff does not recognize the legal authority of any disqualified judicial officer to:

- Strike filings from the docket,
- Deny additions to a formal pleading (Supplemental Complaint), or
- Oversee any aspect of jury trial-related litigation.

Plaintiff hereby reserves all rights under the Constitution and federal rules and calls upon Chief Judge Laura Taylor Swain to enforce reassignment of this matter to a legally qualified, Article III judge immediately.

Respectfully submitted,
April 7, 2025

/s/ John W. Miller

John W. Miller, **American** Inventor
33 Gill Rd.
Waltham, MA 02453
(510) 710-5239
jwmiller382@icloud.com